



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-71613; File No. SR-NYSEMKT-2014-06]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Section 17, which are Rules Applicable to Securities known as Fixed Return Options, to Reflect a Name Change to Binary Return Derivatives, a Change to the Calculation of the Settlement Price, Updating Rule References, Adding New Text for ByRDs Series Available for Trading, Amending the Quoting and Trading Increment Applicable to ByRDs, and Adding a New Paragraph 8 to Rule 975NY(a) and Amending Rule 975NY(b)(1) to Address Obvious Errors in ByRDs

February 25, 2014

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 14, 2014, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 17, which are rules applicable to securities known as Fixed Return Options, to reflect a name change to Binary Return Derivatives (“ByRDs”), a change to the calculation of the Settlement Price, updating rule references, adding new text for ByRDs series available for trading, amending the quoting and trading increment applicable to ByRDs, and adding a new paragraph 8 to Rule 975NY(a) and amending Rule

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

975NY(b)(1) to address Obvious Errors in ByRDs. The text of the proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Section 17, which are rules applicable to securities currently known as Fixed Return Options, to reflect a name change to ByRDs, a change to the calculation of the Settlement Price, updating rule references, adding new text for ByRDs series available for trading, amending the quoting and trading increment applicable to ByRDs, and adding a new paragraph 8 to Rule 975NY(a) and amending Rule 975NY(b)(1) to address Obvious Errors in ByRDs.

Overview

In 2007, the Exchange received approval to trade a type of binary option referred to as Fixed Return Options.⁴ In March 2009, when the Exchange migrated to a new trading system as part of its integration with NYSE Euronext, because the new trading system was not optimized to

⁴ See Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (Approval Order for SR-Amex-2004-27, as amended).

accommodate the trading of Fixed Return Options, the Exchange restricted the opening of new series of Fixed Return Options and limited transactions to closing only.⁵ Subsequently, all open interest in Fixed Return Options was either closed or expired and the contracts became dormant.⁶ Since first migrating over in 2009, the Exchange has regularly enhanced its systems in efforts to support new products and meet business demands. The Exchange's systems now have the necessary functionality and capacity to support the trading of ByRDs contracts.

The Exchange is now in a position to re-launch these securities and is proposing to update its rules to reflect the re-branding of Fixed Return Options ("FRO") as Binary Return Derivatives, also referred to as ByRDs. The Exchange also proposes to update various rule cites to reflect the adoption of Section 900NY, which are the rules that govern trading of options contracts at the Exchange, and which replaced the rules in place prior to March 2009 that previously governed the trading of Fixed Return Options, and delete the reference to the Constitution, which no longer exists.⁷ Additionally, based on its experience from having trading Fixed Return Options and based on participant feedback, the Exchange is proposing to make changes to the manner in which the Settlement Price is calculated to ensure either the Finish High or Finish Low ByRDs contract pays off at expiration; adding text to clarify permissible strike price intervals and expiration series for ByRDs; adding text to specify the minimum price variation ("MPV") applicable to quoting and trading in ByRDs; and adding new text to Rule

⁵ See Information Circular #08-0210 <http://www.amex.com/amextrader/dailylist/data/options/infoCir/2008/ic080210.pdf>.

⁶ See Information Circular #09-0024 <http://www.nyse.com/pdfs/ic090024.pdf>.

⁷ See Securities Exchange Act Release No. 59472 (February 27, 2009) 74 FR 9843 (March 6, 2009), (Approval Order for SR-NYSEALTR-2008-14 as amended); See also Securities Exchange Act Release No. 59454 (March 31, 2009) 74 FR 15802 (April 7, 2009) (Notice of Filing and Immediate Effectiveness of SR-NYSEALTR-2009-17).

975NY to address Obvious Error transactions in ByRDs. The Exchange is also proposing non-substantive technical changes to certain rules associated with the trading of ByRDs.

Renaming and Renumbering of Existing Rules

The Exchange proposes to re-title existing Section 17, Fixed Return Options, (and the rules therein), as Section 17, Binary Return Derivatives (ByRDs) so as to be consistent with the proposed new name of the product and make it easier for Exchange participants to identify the rules applicable to the trading of ByRDs. Similarly, the Exchange proposes to replace the terms “Fixed Return Option” or “FRO” in the existing rule text with the terms Binary Return Derivatives, or ByRDs. Other proposed changes to the rules within Section 17 are described in more detail below.

The Exchange is proposing to add clarifying text to existing Rule 900FRO, which is being amended as Rule 900ByRDs, to make clear that unless otherwise specified in Section 17, the Section 900NY series of rules is applicable to the trading of ByRDs. ByRDs options contracts will be available for both electronic and floor based trading.

The Exchange is proposing minor changes to clarify existing Rule 901FRO, which is being amended as Rule 901ByRDs, to specify that ByRDs contracts shall be designated by the expiration date (day, month and year) strike price, exercise settlement and the underlying security when ByRDs series are listed for trading. Existing rule text only requires specifying expiration month and year. However, because the Exchange now lists and trades Short Term Option Series and Quarterly Option Series, which may have an expiration date that is not a month or year, the Exchange believes that the rule text for ByRDs should specify expiration date as well.

The Exchange is proposing to amend Rule 462(d).10 by updating references to Fixed Return Options and/or FRO and rebranding them as Binary Return Derivative and/or ByRDs. These proposed [sic] revisions are technical in nature and do not in any way make substantive changes to Rule 462.

Series of ByRDs Open for Trading

The Exchange is proposing to amend Rule 903FRO-Series of FROs Open for Trading in its entirety and rename it as Rule 903ByRDs - Series of ByRDs Open for Trading. Presently, the rule simply cites to Rule 903, in order to describe which series may be opened for trading for Fixed Return Options. The Exchange is proposing to delete that reference and adopt new paragraphs (a) (b) and (c) to propose Rule 903ByRDs to specify which series of ByRDs option contract may be opened for trading by the Exchange and the permitted strike price intervals for ByRDs.

Proposed paragraph (a) specifies that the Exchange shall open for trading a minimum of one expiration month for each class of ByRDs options listed, except for Consecutive Week Expiration Series, which are described in proposed paragraph (b). Consecutive [sic] Week Expiration Series are expiration series that will expire at the end of the week, normally a Friday, with consecutive week expirations covering the next five (5) calendar weeks. New expiration week series will be added for trading on Thursday each week, unless Friday is an Exchange holiday in which case new expiration series would be added for trading on Wednesday. Based on feedback from participants who have expressed a desire to see ByRDs listed with generally shorter expirations, as opposed to utilizing the cycle month series, the Exchange believes it is appropriate to permit the listing of ByRDs with five consecutive weeks of expirations so as to

maximize hedging opportunities surrounding near-term events like corporate actions, news releases, corporate earnings and the like.

The Exchange is proposing new paragraph (c) to specify that the strike interval for ByRDs shall be \$1 for strike prices between \$3 and \$200 and \$5 for strike prices above \$200. The proposed rule further specifies that at the time of listing, strike prices may not be listed more than 30% away from the price of the underlying security. The Exchange notes that this is more conservative than the 50% permitted under the Options Listing Procedures Plan (“OLPP”)⁸ for strike prices on securities trading over \$20 in price generally, and considerably more conservative than what the OLPP permits for securities trading below \$20 where strike prices within 100% of the underlying security price may be added. As further proposed, the Exchange may list additional series if the furthest out of the money strike is less than 10% out of the money. At such time, the Exchange would be able to list additional series that are not more than 30% away from the price of the underlying security.

The Exchange believes that the proposed rule on when the Exchange may list ByRDs options strikes the right balance between offering investors the maximum hedging opportunities with ByRDs options while being mindful of creating series that are not likely to offer meaningful trading opportunities. The Exchange believes that offering ByRDs options with \$1 strike price intervals is necessary given the economics of a product that only pays \$100 per contract if it is in the money at expiration. The \$1 strike price interval means that investors will have strike prices reasonably close to the current price of the underlying security such that they have an

⁸ The OLPP is a national market system plan sponsored by all US options exchanges and the OCC which describes procedures to be followed by the parties in connection with selecting specified underlying interests for listing purposes and requesting a review of such selections.

opportunity to buy or sell a ByRDs contract best able to hedge near-term movements in the underlying security price.

The Exchange is proposing to amend rule text in Rule 904FRO, which is being amended as Rule 904ByRDs, to use the term underlying “security” instead of underlying “stock or Exchange-Traded Fund Share.” The Exchange is making this change to ensure consistency with changes proposed for Rule 903ByRDS, and other rule text found elsewhere in Exchange rules, which generally refer to underlying securities when discussing options.

Settlement Price

The Exchange is proposing to add new commentary .02 to existing Rule 910FRO, which is being amended as Rule 910ByRDs, based on feedback from participants who traded Fixed Return Options. Proposed commentary .02 specifies that the Settlement Price⁹ at expiration shall be calculated so as to always round up \$0.01 in those instances where the Settlement Price exactly equals an expiring ByRDs option strike price. For example, if the calculated Settlement Price is \$20.00, and there are expiring ByRDs Finish High and Finish Low contracts with a strike price of \$20.00, the Settlement Price will be rounded up to \$20.01. The effect of rounding will be to have long \$20 strike Finish High holders receiving \$100 and long \$20 strike Finish Low holders receiving \$0.

Absent this rounding, a participant may potentially have a position that appears to guarantee a pay-off of \$100 at expiration, but would instead receive \$0. For example, assume an investor holds both a \$20 strike Finish High contract and \$20 strike Finish Low contract. Previously, it was more than likely that either the Finish High or Finish Low contract would

⁹ See proposed Rule 900ByRDS(b)(4) & (5), which collectively define both the Settlement Price and how it is calculated based upon volume weighted average price (“VWAP”) for the entire day of trading on expiration.

expire in the money and consequently the holder would receive \$100 at expiration. However, in the unlikely event that the Settlement Price was calculated to exactly equal the \$20 strike price, such holder of the two contracts would receive \$0. Although the risk of the Settlement Price equaling the strike price was small, the Exchange believes that this could cause problems both for hedging and explaining to investors what would happen in the unusual circumstance where the Settlement Price matched the strike price of an expiring ByRDs contract exactly. Therefore, the Exchange is proposing this change to ensure that either the Finish High or the Finish Low ByRDs option contracts will always pay off at expiration. The Exchange believes this will result in less opportunity for investor confusion and less uncertainty for participants as a whole.

Underlying Securities

The Exchange is proposing to revise Commentary .02 to Rule 915FRO, which is being amended as Rule 915ByRDs, to include Section 107 Securities¹⁰ as eligible underlying securities upon which ByRDs contracts may be listed, provided all other listing criteria for ByRDs have been met. The Exchange notes that approval to list options on Section 107 Securities came subsequent to the time when Fixed Return Options were first offered and traded.¹¹ Given the success and popularity of options on Section 107 Securities, such as those on the iPath S&P 500 VIX Short Term Futures TM ETN (symbol:VXX), the Exchange believes it is appropriate to offer investors the opportunity to hedge those instruments with ByRDs option contracts as well.

Similarly, the Exchange is proposing to amend Commentary .03 to existing Rule 916FRO, which is being amended as Rule 916ByRDs, to include Section 107 Securities. Rule 916ByRDs discusses the criteria necessary for the continued approval to introduce new series of

¹⁰ See NYSE MKT Rule 915 Commentary .11.

¹¹ See Securities Exchange Act Release No. 57150 (January 15, 2008) 73 FR 3765 (January 22, 2008) (Approval Order for SR-Amex-2007-130, as amended).

ByRDs for trading. Failing to meet the criteria shall mean that no new series of ByRDs on that underlying security will be introduced for trading.

The Exchange is proposing to delete Rule 918FRO, Trading Rotations, Halts and Suspensions as it referenced deleted Rule 918 which has since been replaced by the rules in Section 900NY¹², which as noted above, have specifically been incorporated by reference in Rule 900ByRDs.

Minimum Price Variation for ByRDs

The Exchange is proposing to delete an obsolete rule reference in existing Rule 951FRO, which is being amended as Rule 951ByRDs, and adding new text to state that the Minimum Price Variation (“MPV”) for quoting and trading of ByRDs option contracts is \$0.01 for all series. The Exchange believes that given the maximum pay off at expiration for a ByRDs contract is \$100, adopting an MPV with a \$0.01 value is appropriate. If the Exchange were to quote and trade ByRDs in \$0.05 MPV’s [sic], the resulting \$5 incremental price of a ByRDs option contract would represent 5% of the potential payout at expiration, which would unnecessarily erode profits or add to losses. Therefore, the Exchange believes that the optimal MPV for these securities in [sic] \$0.01. The Exchange notes that other securities, such as foreign currency options, traded on other exchanges also have \$0.01 MPV’s [sic].¹³

Bid-Ask Differentials

The Exchange is also proposing to delete an obsolete rule reference in existing Rule 958FRO, which is being amended as Rule 958ByRDs, which describes bid-ask differentials for

¹² See Rule 952NY which addresses Trading Auctions (a/k/a “rotations”) and Rule 953NY which addresses Trading Halts and Suspensions.

¹³ See ISE Rule 710, Supplementary Material .02, which states, “Notwithstanding any other provision of this Rule 710, the Exchange will permit foreign currency options and options on a Foreign Currency Index to be quoted and traded in one-cent increments.”

ByRDs. The Exchange is not proposing any change with respect to Market Maker quoting obligations for ByRDs – other than to simply propose a change to update an obsolete rule cite. Market Makers will continue to be obligated to quote ByRDs no more than \$0.25 wide, except during the last trading day before expiration when they may quote ByRDs \$0.50 wide.

The Exchange is also proposing to eliminate a provision in Rule 958FRO, (Rule 958ByRDs), which provides that the permissible price differential for any in-the-money series may be identical to that of the underlying security market. Because the bid-ask differential of an underlying security is not necessarily a determining factor in the theoretical value of an in-the-money ByRDs options contract the Exchange does not believe that wider bid-ask differentials are needed simply because the underlying security may be greater than maximum bid-ask differentials provided for above. As provided for in existing Commentary .01, the Exchange may continue to establish permissible price differences other than those noted above for one or more series or classes of ByRDs, as warranted by market conditions.

Obvious Errors and Catastrophic Errors in ByRDs

Finally, the Exchange proposes to revise Rule 975NY (a)(1), adopt new subsection (a)(8) to address the handling of transactions in ByRDs option contracts that qualify for treatment under the Obvious Error provisions of Rule 975NY and add new text to paragraph (d) to address the handling of Catastrophic Errors in ByRDs. Unless otherwise specified, the provisions of Rule 975NY will continue to apply.

Proposed paragraph (a)(8) states, “Binary Return Derivatives: Notwithstanding subsection (a)(1) of this rule, any transaction in a Binary Return Derivatives contract that is higher or lower than the Theoretical Price by \$.25 or more shall be deemed an Obvious Error, subject to the adjustment procedures of paragraph (a)(3), unless such adjustment would result in

a price higher than \$1.02, in which case the adjustment price shall be \$1.02.” As ByRDs will either pay \$0 or \$100 at expiration, a single ByRDs contract should not have a value greater than \$1.00, therefore the Exchange believes that any adjustment under the provisions of the Obvious Error rule should be capped at a price no higher than \$1.02. Further, the Exchange is making changes to paragraph (d)(1) to explicitly state that transactions in ByRDs contracts over \$1.02 shall qualify as Catastrophic Errors if participants request a review under the existing provisions of paragraph (d)(3)(A). Transactions in ByRDs contracts that qualify as Catastrophic Errors will be adjusted in accordance with the procedures of new subsection (i) of paragraph (d)(3)(C) such that any Catastrophic Error in ByRDs contracts will result in an adjustment to \$1.02, unless both parties mutually agree to a different adjustment price.

The Exchange believes that using \$1.02 as the maximum price by which an Obvious Error involving a ByRDs contract shall be adjusted is appropriate as it is not unreasonable for someone looking to close a position (for example, for tax loss purposes) to have to pay a slight premium to do so – similar to how an investor might choose to sell an option under parity or buy back an option position for more than its theoretical maximum value. For the same reason, the Exchange believes that using \$1.02 as the threshold for determining whether a Catastrophic Error has occurred in a ByRDs contract is also appropriate.

By adjusting all ByRDs Catastrophic Error transactions over \$1.02 to a price of \$1.02, the certainty of having a trade is retained, while the party that caused the error experiences some small penalty for having created the error; this is similar to the manner in which non-Customer to non-Customer transactions involved in Obvious Errors are handled presently.¹⁴

¹⁴ See Rule 975NY(a)(3)(A).

The Exchange is also proposing minor technical changes to Rule 980FRO, which is being amended as Rule 980ByRDs, to capitalize the defined term Settlement Price.

With regard to any systems impact, NYSE Amex Options represents that Exchange systems have the functionality to support the trading of Binary Return Derivatives. The Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the potential additional traffic associated with the re-listing and trading of ByRDs contracts. The Exchange has further discussed the proposed listing and trading of ByRDs contracts with the OCC, which has represented that it is able to accommodate the clearing and settlement of ByRDs contracts. The Exchange will monitor any increased trading volume associated with the listing of new series of ByRDs and will analyze the effect, if any, that the additional volume has on the capacity of the Exchange's, OPRA's, and the OCC's automated systems. In addition, the Exchange does not believe the listing of Binary Return Derivatives will cause fragmentation to liquidity in the options markets.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that amending the existing rules governing Fixed Return Options and replacing them with rules specific for Binary Return Derivative Options

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

removes impediments to and perfects the mechanism of a free and open market by conforming Exchange rules to the new branding for this form of options contract, which the Exchange plans to reintroduce. Similarly, the Exchange believes that updating Exchange rules governing ByRDs to include cross-references to rules that have been updated since March 2009, e.g., the amendments to cross-reference the Rule 900NY Series, will remove impediments to and perfect the mechanism of a free and open market by reducing any confusion in Exchange rules regarding which rules govern the trading of ByRDs options contracts.

More specifically, the Exchange believes that augmenting the rules governing ByRDs to adopt new paragraphs (a) (b) and (c) to proposed Rule 903ByRDs to specify which series of ByRDs option contract may be opened for trading by the Exchange and the permitted strike price intervals for ByRDs will also remove impediments to and perfect the mechanism of a free and open market because it will consolidate in a single location the rules governing the trading of ByRDs and therefore provide clarity into [sic] the process for listing ByRDs options. In addition, the Exchange believes that adding the listing of ByRDs on Section 107 Securities will offer investors the opportunity to hedge those instruments with ByRDs option contracts, thus further removing impediments to the mechanism of a free and open market.

The Exchange believes that the proposed change to calculating the Settlement Price so that it will always round up \$0.01 when the Settlement Price matches an existing strike price is designed to avert a situation where neither the Finish High nor the Finish Low Binary Return Derivative option contract pays off at expiration. The Exchange believes that providing the certainty of a payout on at least one side of a ByRDs option protects investors and the public interest in general.

The Exchange notes that that adopting a \$0.01 MPV is consistent with pricing of other

products at competing exchanges¹⁷ and believes that the proposed rule will help investors maximize profits and/or minimize losses and therefore is designed to promote just and equitable principles of trade.

Finally the Exchange believes that amending rules governing Obvious Error and Catastrophic Error in order to adjust ByRDs transitions that occur at prices greater than \$1.02, is designed to promote just and equitable principles of trade and the protection of investors by averting situations where a market participant might potentially pay significantly more than the maximum value for of [sic] ByRDs option.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed revisions to existing Exchange rules and the adoption of new ones are intended to make trading ByRDs options more attractive to investors, which should help the Exchange to compete with other market centers. In addition, the Exchange has found that offering ATP Holders a wide variety of investment products attracts new market participants to the Exchange, which may lead to greater competition and increased liquidity which benefits any investor choosing to trade on NYSE Amex Options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer

¹⁷ Supra Footnote No. 13.

period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2014-06 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2014-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2014-06, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,
Deputy Secretary.

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¹⁸ 17 CFR 200.30-3(a)(12).